

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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LANCE T. OTTERSTEIN,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting Commissioner  
of the Social Security Administration,

Defendant.

2: 13-cv-2311-JCM-VCF

**ORDER**

Before the court are Plaintiff Lance T. Otterstein's Motion to Proceed *In Forma Pauperis* (#1<sup>1</sup>) and Complaint (#1-1).

***IN FORMA PAUPERIS APPLICATION***

Plaintiff Lance T. Otterstein asserts in his application to proceed *in forma pauperis* that he lives with his parents, currently unemployed, has no take home wages, no other source of income. (#1). Plaintiff also asserts that he has no money in either a checking or savings account. (*Id.*) Accordingly, Plaintiff's request to proceed *in forma pauperis* is granted pursuant to § 1915(a).

**LEGAL STANDARD**

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* § 1915(e)(2). "To survive a

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<sup>1</sup> Parenthetical citations refer to the court's docket.

1 motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to  
2 relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations and  
3 citation omitted).

4 In considering whether the plaintiff has stated a claim upon which relief can be granted, all  
5 material allegations in the complaint are accepted as true and are to be construed in the light most  
6 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). When a court  
7 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with  
8 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the  
9 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.  
10 1995) (citation omitted).

## 11 DISCUSSION

12 Plaintiff’s complaint arises from an unfavorable decision by the Commissioner of Social Security  
13 Administration (hereinafter “Commissioner”). (*See* Compl. (#1-1) at 1). Plaintiff asserts that he is  
14 “disabled as that term is defined in the Social Security Act,” and that he filed an application for  
15 disability insurance benefits. (*Id.*) The Commissioner denied the application both upon initial review and  
16 reconsideration. (*Id.*) Plaintiff participated in a hearing before the ALJ, and the ALJ issued a decision  
17 also denying plaintiff’s claim for benefits. (*Id.*) The Appeals Counsel denied plaintiff’s request for a  
18 review of the ALJ’s decision, making the Commissioner’s decision final. (*Id.*) Plaintiff has appealed the  
19 decision of the Commissioner to this court, and “requests that this court reverse that decision, or in the  
20 alternative, . . . remand this matter for a new hearing.” (*Id.*)

21 Plaintiff may appeal to this court the Commissioner’s denial of his application for Disability  
22 Insurance Benefits under Title II of the Social Security Act. *See* 42 U.S.C. §§ 401-433. This court has  
23 jurisdiction over the matter. *Id.* Construing plaintiff’s allegations in light most favorable to Plaintiff, the  
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1 court finds that Plaintiff has asserted a claim upon which relief can be granted. *See Russell*, 621 F.2d at  
2 1039.

3 Accordingly, and for good cause shown,

4 IT IS ORDERED that Plaintiff's Application to Proceed *In Forma Pauperis* (#1) is GRANTED.

5 IT IS FURTHER ORDERED that Plaintiff is permitted to maintain the action to conclusion  
6 without the necessity of prepayment of any additional fees, costs, or security. This order granting *in*  
7 *forma pauperis* status does not extend to the issuance of subpoenas at government expense.

8 IT IS FURTHER ORDERED that the Clerk of the Court file the Complaint (#1-1) and serve the  
9 Commissioner of the Social Security Administration by sending a copy of the summons and Complaint  
10 (#1-1) by certified mail to: (1) General Counsel, Social Security Administration, Room 611, Altmeyer  
11 Bldg., 6401 Security Blvd., Baltimore, Maryland 21235; (2) the Attorney General of the United States,  
12 Department of Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530; and  
13 (3) Office of the Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear St.,  
14 Suite 899, San Francisco, CA 94105-1545.

15 IT IS FURTHER ORDERED that the Clerk of Court issue summons to the United States  
16 Attorney for the District of Nevada and deliver the summons and Complaint (#1-1) to the U.S. Marshal  
17 for service.

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1 IT IS FURTHER ORDERED that from this point forward, plaintiff must serve upon Defendant,  
2 or his attorney if he has retained one, a copy of every pleading, motion, or this document submitted for  
3 consideration by the court. Plaintiff must include with the original paper submitted for filing a  
4 certificate stating the date that a true and correct copy of the document was mailed to the defendants or  
5 their counsel. The court may disregard any paper received by a district judge, magistrate judge, or the  
6 Clerk which fails to include a certificate of service.

7 DATED this 6th day of January, 2014.

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10 CAM FERENBACH  
11 UNITED STATES MAGISTRATE JUDGE  
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